Address

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During the next fifty years, I can envision great changes in our way of life—changes not only in our physical surroundings and in the normal events of life but in the law itself because, in our rapid growth, we have overlooked so many things that are vital to our national life.

We have made wonderful progress in two centuries, advancing from a little country that was considered the ugly duckling of the world in 1776 to the great and powerful position which we hold today. It represents great enterprise, great skill, great determination, and great optimism to accomplish what we have done in that relatively short space of time.

However, at the same time, we have forgotten to concern ourselves with the by-products of the progress we have made. I am referring to the way we have neglected the very air that we breathe in order to make mechanical and technological progress. We have neglected it to an extent that the air is dangerous to the public health. There must be some solution for that.

We have let our waterways become polluted to the point where the water is not only no longer potable, it is not even clean enough to bathe in.

We have tried to make the soil that we have been so proud of—the soil which has been so productive for us—more productive by

the use of pesticides and other chemicals to the point where now it has become dangerous, in many respects, to human life. That is not because anyone wanted to make those things happen. It is because we are living in a rapidly changing world where we are moving so fast that we only have time to think of those things which are directly ahead of us.

But now the time has come when these things are all surfacing at once. We realize that we must do something about our environment. We realize that we must do something about the consumer interest as well as the manufacturing and selling of goods in the markets. We realize that we must take care of the lives and limbs of people who are working in our great factories.

These are areas that have been overlooked in the past. The solution lies in the law. I do not mean restrictive law, but rather law that will conform to the welfare of the entire public. I have noticed in recent years—the last eight or ten years at least—that the young lawyers who have emerged from the universities and colleges have undertaken to reorient our profession from a clearly client-oriented profession to one that is oriented toward the public interest. I have seen young firms organize to engage in trying to improve our environment, our consumer interests, and the general welfare of our people. They work with great diligence and, I might add, with great success.

I believe that the students today, like the young lawyers of the past few years, are going to continue to do that kind of work, and be oriented largely toward that kind of practice, because the problems they will work at will be the most important things in their lives. I believe they will not only have exciting careers but also very rewarding ones.

Of course, if these by-products of our rapid progress occur in the industry and business of our country, they will occur in our Government as well. We have obviously overlooked dangers in that area which deserved our attention.

At the present time, we are witnessing happenings in the higher echelons of Government that make us tremble. I am certain that young lawyers are going to watch out for our institutions, and see that they are not eroded in the interests of the aggregation of power to any person or to any group of persons in our Nation.

The point I want most to stress is that we do not have to worry so much about individuals. Individuals change. If individuals are wrong, we can rid ourselves of them and get new ones through the necessary procedures, even as did the ancients in cleansing the

Augean Stables. But that is not enough! We must preserve our institutions in their cherished form. There is danger in this country, not only of eroding, but also of destroying the efficacy of some of them.

I speak specifically of what has recently been directed at the Supreme Court of the United States. For a number of years, many people who have not succeeded in obtaining the decisions they would like from the courts blame the courts for many of the conditions which exist. Because the courts cannot defend themselves in the political arena, those who are in politics can make accusations which must go unanswered unless the people are aware of what is going on, and unless they insist on flushing out the problems that are involved in any such suggestions.

We need only look back a few years to the days of Senator Joseph McCarthy, when people who might have known a Communist, or one who was considered suspect, were dragged in the mire before the public, and made to appear as subversive and dangerous persons. Those were days when the Congress was under the domination of the Un-American Affairs Committee of the House of Representatives. That went on for a number of years until the Supreme Court of the United States discarded the theory of guilt by association and other devious devices which were the products of that era.

The Congress itself tried to change the jurisdiction of the Supreme Court so as to deprive it of jurisdiction in all cases involving subversion as well as other aspects of criminal law. That effort almost prevailed. Because of the lack of opposition by the organized bar and other people who were not aware of the dangerous situation, the Senate came within eight votes of enacting these measures into law. However, they died aborning.

For two or three years another proposal was advanced. This came from the States of the Union that did not like the segregation and reapportionment cases. They got together and framed a proposed Constitutional Amendment which provided for a new court called the "Court of the Nation" to be comprised of the fifty State Chief Justices. It was to have jurisdiction over the Supreme Court of the United States in all cases affecting federal-state relations. This proposal would have submerged the Supreme Court and

would have made it a court subordinate to the proposed "Court of the Nation." About twenty-five State Legislatures quietly, without any debate and without any organized program on the part of the Bar, approved that Constitutional Amendment. It could possibly have obtained ratification by the other dozen Legislatures had it not been for a few of the important newspapers in the country becoming aware of what was just "sliding" through without any national debate of any kind. When the newspapers publicized it and started the debate, the effort fell by the wayside.

That was not the end of it, however. Just recently, we have had a proposal that the Supreme Court jurisdiction be limited again. This time, it is said that it is not because of dissatisfaction with the opinions of the Supreme Court but because the Supreme Court is so overburdened with work that it cannot manage its own docket. The assertion that there is any congestion does not come from the Supreme Court or its record, because it has been current for the past forty years, and there is no reason to believe it cannot be so for a great many more years without radical change of any kind.

The proposal is that a new court to be known as the National Court of Appeals should be established with judges appointed for three years and with the right to determine what cases could, in fact, go to the Supreme Court. That, of course, would subvert the Supreme Court to the will of this lower court. None of those judges would serve more than three years, and each year one-third of the court would be appointed and one-third would be replaced. So, you would never have a court with any real experience, or one that would be responsible for the conditions they create.

This entire movement was done in secrecy. It was advocated by an appointive committee of seven lawyers and legal professors without consultation with anyone else as to how or why this should be done.

I do hope that it will be remembered all of these suggested nostrums would adversely affect the practice of law, would vitally affect every client, and would violate every individual's right to achieve justice if they should become law. If any of them are to be further pressed, it is high time for a real debate in the legal profession. I would like to see every Law Review in this country debate the question as to whether or not the Supreme Court's jurisdiction should be limited or changed. If that was done, I would have no fear of the consequences, because I believe I know what the members of our profession would do.

I do not feel a need to defend any decision the Court made during my years as Chief Justice. Only history will tell whether they were good or bad. Neither do I criticize anything the present Court may do. But, I do deplore any effort made to change the institutions of our country because they have not failed us in any respect. The failure to follow the constitutional provisions and the wisdom of the Founding Fathers—not the failure of our institutions themselves—is responsible for our shortcomings. Our institutions, as originally conceived, can serve us greatly, as they have in the past, and I have the confidence to believe that the young people who are coming into the law today and who normally have fifty years or more in which to serve it, will see to it that the provisions of the Constitution are honored so that we may go on to bigger and better things.

* Excerpts from an extemporaneous speech delivered by the Honorable Earl Warren, Chief Justice of the United States, retired, at the commencement exercises of the University of San Diego School of Law, June 2, 1973.